

Message Text

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TO AMEMBASSY BELGRADE

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E.O. 11652: GDS

TAGS: BTRA, EIND, YO

SUBJECT: DRUG TRADEMARK PROBLEMS

REF: (A) BELGRADE 457, (B) BELGRADE 908

1. REGARDING PARAGRAPH 5 OF REFTEL A, DEPARTMENT HAS CONSULTED WITH NORMAN ST. LANDAU, JOHNSON AND JOHNSON, ABOUT SPECIFIC EXAMPLES OF U.S. APPLICATIONS FOR TRADE-MARK REGISTRATIONS THAT HAVE TAKEN UNUSUALLY LONG TIME TO PROCESS. LANDAU HAS TAKEN UP THIS MATTER WITH U.S. PHARMACEUTICAL MANUFACTURERS ASSOCIATION'S COMMITTEE ON TRADEMARKS TO OBTAIN SUCH EXAMPLES. WE WILL INFORM EMBASSY AS SOON AS SURVEY COMPLETED.

2. CONCERNING PARAGRAPH 5 OF REFTEL B, WE HAVE CONSULTED
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PAGE 02 STATE 047833

WITH U.S. PATENT AND TRADEMARK OFFICE AND HAVE OBTAINED FOLLOWING INFORMATION:

-- (A) THERE IS NO PROVISION IN THE MADRID AGREEMENT ITSELF WHICH WOULD PROHIBIT A YUGOSLAV ENTERPRISE FROM EXPORTING DRUG PRODUCTS TO COUNTRIES WHERE THE TRADEMARK IS ALREADY REGISTERED. SUCH COUNTRY'S NATIONAL LAW MAY

PROHIBIT THE IMPORTATION OF GOODS BEARING A TRADEMARK
WHEN THAT MARK IS REGISTERED IN THAT COUNTRY BY ANOTHER.

HOWEVER, IMPLEMENTATION OF THIS TYPE OF LAW USUALLY
REQUIRES LEGAL OR ADMINISTRATIVE ACTION. OF COURSE,
THE ASSIGNOR OF THE TRADEMARK TO THE YUGOSLAV ENTERPRISE
WOULD HAVE TO MAINTAIN REGISTRATION OF HIS MARK IN EACH
COUNTRY IN WHICH HE WANTED TO BAR IMPORTATION.

-- (B) YUGOSLAVIA IS A MEMBER OF THE MADRID AGREEMENT
BUT THE UNITED STATES IS NOT. THUS, THE POSSIBILITY
EXISTS THAT THE YUGOSLAV ENTERPRISE COULD SEEK INTERNA-
TIONAL REGISTRATION OF THE MARK UNDER THE MADRID AGREE-
MENT BASED ON ITS OWNERSHIP OF THE YUGOSLAV REGISTRATION.

-- (C) UNDER THE PARIS INDUSTRIAL PROPERTY CONVENTION,
TO WHICH BOTH U.S. AND YUGOSLAVIA ARE PARTIES, ARTICLE 9
ONLY APPLIES TO THE SEIZURE OF GOODS UNLAWFULLY BEARING
A TRADEMARK. IF THE YUGOSLAV ASSIGNMENT WAS CONSIDERED
LAWFUL, THEN ARTICLE 9 WOULD NOT APPLY. ARTICLE 6QUATER
(2) PERMITS ANY COUNTRY TO REGARD AN ASSIGNMENT AS IN-
VALID IF USE OF THE MARK WOULD MISLEAD THE PUBLIC. BUT,
HERE AGAIN, THIS WOULD BE ON A COUNTRY-BY-COUNTRY BASIS,
AND CERTAINLY WOULD NOT PROVIDE A BLANKET PROHIBITION TO
EXPORTATION OF YUGOSLAV DRUGS BEARING THE ASSIGNED MARK.

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PAGE 03 STATE 047833

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